



KOSOVO SPECIALIST CHAMBERS  
DHOMAT E SPECIALIZUARA TË KOSOVËS  
SPECIJALIZOVANA VEÇA KOSOVA

**In:** KSC-BC-2018-01

**Before:** Single Judge Panel  
Judge Nicolas Guillou

**Registrar:** Dr Fidelma Donlon

**Date:** 5 December 2019

**Language:** English

**Classification:** Strictly Confidential and *Ex Parte*

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**DECISION**

**on Working Language**

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**Specialist Prosecutor**

Jack Smith

**THE SINGLE JUDGE** herewith renders the Decision on Working Languages, pursuant to Article 20 of the Law on Specialist Chambers and Specialist Prosecutor's Office ("Law") and Rule 8(3)(a) of the Rules of Procedure and Evidence Before the Kosovo Specialist Chambers ("Rules").

## I. PROCEDURAL BACKGROUND

1. On 29 May 2018, the President of the Kosovo Specialist Chambers ("Specialist Chambers") appointed the Single Judge to the proceedings KSC-BC-2018-01 for the purpose of considering any request for judicial authorisation and related matters submitted by the Specialist Prosecutor's Office ("SPO") prior to the filing of an indictment and the ensuing assignment of a Pre-Trial Judge under Article 33(1)(a) of the Law.<sup>1</sup>

2. On 8 November 2019, the Single Judge informed the Specialist Prosecutor of his intention to issue a decision on working language, in which English would be determined as language to be used in proceedings KSC-BC-2018-01. Accordingly, the Single Judge invited the Specialist Prosecutor to make submissions on this matter and to bring to the attention of the Single Judge any issues he would foresee in respect of translation resources and matters related thereto.<sup>2</sup>

3. On 19 November 2019, the Specialist Prosecutor filed his submissions, concurring with the Single Judge that the working language for proceedings KSC-BC-2018-01 should be English.<sup>3</sup> In so doing, the Specialist Prosecutor noted

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<sup>1</sup> KSCPR-2018/F00004, President, *Decision Assigning a Single Judge Pursuant to Article 33(2) of the Law* ("Assignment Decision"), 29 May 2018.

<sup>2</sup> KSC-BC-2018-01/F00072, Single Judge, *Order to the Specialist Prosecutor for Submissions on Working Language*, 8 November 2019, para. 3.

<sup>3</sup> KSC-BC-2018-01/F00074, Specialist Prosecutor, *Prosecution Submissions on Working Language(s) for KSC-BC-2018-01* ("SPO Submission"), 19 November 2019, para. 2.

that this would be consistent with ensuring efficient proceedings, whilst reflecting a practical and responsible allocation of resources.<sup>4</sup>

## II. APPLICABLE LAW

4. Pursuant to Article 20 of the Law, the official languages of the Specialist Chambers are Albanian, Serbian and English, and in any given proceedings, a Panel may decide the working languages for those proceedings, as appropriate and with full respect of the rights of the accused.

5. Pursuant to Rule 8(3)(a) of the Rules, subject to Article 20 of the Law, as early in the proceedings as possible, the Panel, after hearing the Parties and, where applicable, Victims' Counsel, shall decide which working language(s) shall be used in the proceedings.

## III. DISCUSSION

### A. GENERAL CONSIDERATIONS

6. Article 20 of the Law permits the Single Judge to adopt a decision on working languages in any given "proceedings". Neither the Law nor the Rules provide a definition of "proceedings". The term has been defined as "the regular and orderly progression of a lawsuit, including all acts and events between the time of commencement and the entry of judgment,"<sup>5</sup> or, more generally, as "a judicial cause pending before a Chamber".<sup>6</sup> The President assigned the Single Judge to consider all

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<sup>4</sup> SPO Submissions, para. 3.

<sup>5</sup> Black's Law Dictionary, Abridged 10<sup>th</sup> Edition, Garner (Ed.), 2015, p. 1019.

<sup>6</sup> See International Criminal Court, *Situation in the Democratic Republic of the Congo*, Appeals Chamber, Judgment on victim participation in the investigation stage of the proceedings in the appeal of the OPCD against the decision of Pre-Trial Chamber I of 7 December 2007 and in the appeals of the OPCD and the Prosecutor against the decision of Pre-Trial Chamber I of 24 December 2007, 19 December 2008, ICC-01/04-556, para. 45.

requests for judicial authorisation and related matters submitted by the Specialist Prosecutor prior to the filing of an indictment, i.e. at the investigation stage.<sup>7</sup> Insofar as the Single Judge is requested to rule upon such requests and related matters, judicial “proceedings” take place.<sup>8</sup> Thus, the Single Judge may issue a decision on working languages for the purpose of proceedings under KSC-BC-2018-01.

7. In the context of judicial proceedings during the investigation stage submissions and supporting material thereto are filed predominantly by the Specialist Prosecutor’s Office (“SPO”), the sole party to proceedings under KSC-BC-2018-01. As no charges have been levied against any particular suspect, their language skills cannot be taken into account.

8. Hitherto, the SPO has submitted all its filings in English. Further, all decisions and orders rendered by the Single Judge have been filed in English.

9. In light of the mandate of the Specialist Chambers to ensure, *inter alia*, efficient criminal proceedings, as set forth in Article 1(2) of the Law, it is necessary to regulate the working language in the present proceedings in order to avoid significant delays in the analysis and decision-making process. In addition, there is a necessity to provide clarity for the Specialist Prosecutor and any participant, as the case may be, for the preparation and organisation of their submissions. Further, the determination of a working language will increase the foreseeability and planning capacity of language servicing sections with the Registry and the SPO.

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<sup>7</sup> Assignment Decision, para. 16. The Single Judge notes that the investigation phase has been determined to be the stage “prior to the case itself, for which there is no defendant as such, given that no individual has been issued with a warrant of arrest or a summons to appear”, see International Criminal Court, *Situation in the Democratic Republic of the Congo*, Pre-Trial Chamber I, Decision on the Prosecution’s Application for Leave to Appeal the Chamber’s Decision of 17 January 2006 on the Applications for Participation in the Proceedings of VPRS 1, VPRS 2, VPRS 3, VPRS 4, VPRS 5 and VPRS 6, 31 March 2006, ICC-01/04-135-tEN, para. 36.

<sup>8</sup> Similarly, International Criminal Court, *Situation in the Republic of Kenya*, Pre-Trial Chamber II, Decision on Victims’ Participation in Proceedings Related to the Situation in the Republic of Kenya, 3 November 2010, ICC-01/09-24, para. 9; *Situation in the Democratic Republic of the Congo*, Pre-Trial Chamber I, Decision on victims’ participation in proceedings relating to the situation in the Democratic Republic of the Congo, 11 April 2011, ICC-01/04-593, paras 9-10.

10. As a final consideration, the Single Judge notes that the SPO has an in-house language service. As a result, the Single Judge will not, as a matter of principle, require translations to be undertaken by the Registry Language Services Unit (“LSU”).

#### B. DETERMINATION OF WORKING LANGUAGE

11. For the purpose of these proceedings under KSC-BC-2018-01, the working language is determined to be English. Accordingly, the Specialist Prosecutor shall submit any filings in English. If annexes, supporting material or other evidence the Specialist Prosecutor relies upon are, in whole or in part, in a language other than English, a translation into English must be provided.

#### C. PRACTICAL IMPLEMENTATION

12. For the purpose of the practical implementation of the above determination, the following directions are provided to the Specialist Prosecutor and any participant, as the case may be. The directions are organised in two scenarios where the need for translation arises:

- (1) *General rule*: directions prior to the submission of filings, including annexes, supporting material or evidence; and
- (2) *Exception*: directions after the submission of filings, including annexes, supporting material or evidence.

Lastly, the procedure for the resolution of any dispute over questions involving translation is indicated.

## 1. Directions for Scenario Prior to the Submission of a Filing

13. It is the obligation of the Specialist Prosecutor to abide by the following directions as a general rule *prior* to the submission of any filing, including annexes, supporting material or other evidence.

14. Filings must be submitted by the Specialist Prosecutor in English. Where text elements, either in the body of the document or in a footnote, are in a language other than English, the Specialist Prosecutor must provide a translation into English.

15. The same language requirement applies to any annexes, supporting material or other evidence submitted upon which the Specialist Prosecutor relies. This applies to material produced by the Specialist Prosecutor or collected from any other source. In the interest of retaining in the record of the proceedings only relevant material, there is no need to submit material in its entirety if the Specialist Prosecutor only relies on parts thereof. Where a document is inseverable and the Specialist Prosecutor only relies on discrete parts of a document submitted, he is required to indicate specifically, as the case may be, the concrete section, page, paragraph or sentence he relies upon and to provide an English translation thereof.

16. In respect of any filings, including annexes, and supporting material submitted by individuals, Kosovo authorities, Third States or international organisations, the following considerations apply:

- (1) A filing, including annexes, and supporting material lodged by an individual from or authorities of Kosovo may be submitted in English, Albanian or Serbian;
- (2) A filing, including annexes, and supporting material lodged by an individual from or authorities of Third States or from an international organisation may be submitted in English or in any other chosen or official language;

- (3) If a filing, including annexes, and supporting material is directed to the Panel, it shall be distributed by the Registry. It is within the responsibility of the Registry to provide for the translation of any filing, including annexes, and material so submitted into English.
- (4) If a filing, including annexes, and supporting material, by individuals, Kosovo authorities, Third States or international organisations is submitted by the SPO, it is within its responsibility to provide for the translation thereof prior to submitting it to the Panel.

17. In respect of any audio, video or online material, the Specialist Prosecutor and any participant, as applicable, may not rely upon such material without providing a transcription thereof. For any such material, upon which the Specialist Prosecutor or any participant, as applicable, relies, the following details must be provided:

- (1) If applicable, the relevant online source as well as the date and time at which it was last accessed;
- (2) The exact time slot or text extracts, as the case may be, upon which the Specialist Prosecutor or participant, as applicable, relies;
- (3) A transcription of the relevant extract in its original language, whether in the main filing or in an annex thereto; and
- (4) If submitted by the Specialist Prosecutor, a translation of the transcription of the relevant extract into English.

18. As a matter of principle, translations prepared by qualified translators, either within the LSU or by the SPO language services, are preferred. However, the Single Judge is mindful that, in certain instances, such as urgency or unavailability of qualified translators, other translations may be accepted.<sup>9</sup>

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<sup>9</sup> See SPO Submissions, para. 4.

19. As provided for in Section 4(2) of the Registry Policy on Translation and Interpretation (KSC-BD-13) (“Policy”), translations provided by the LSU shall be labelled as “Draft”, “Unrevised” or “Official”.

20. Where a translation originates from the SPO and has been prepared by qualified translators or other similarly qualified staff, it shall be labelled as “SPO Translation”. Where a translation provided by the SPO has been prepared by others, such as another judicial institution or non-qualified translators, it shall bear no label.<sup>10</sup> The appropriate labelling of translations (or lack thereof) remains the responsibility of the SPO. It is within the Single Judge’s discretion to subsequently request the verification by the LSU of any translation so provided by the SPO.

21. Whilst the SPO has its own language services, it is encouraged to coordinate and cooperate with the LSU in translation matters so as to expedite proceedings and maximise efficiency.<sup>11</sup> Any translation requests to the LSU shall be made sufficiently in advance, and in line with the protocols in place for the utilisation of the translation software FLOW, so as to allow for the proper translation and revision of the text elements concerned.

## **2. Directions for Scenario After the Submission of a Filing**

22. If a filing, or parts thereof, is submitted in a language other than English, the Court Management Unit (“CMU”) shall request a translation thereof through the electronic court management system Legal Workflow (“LWF”), in accordance with Section 5(1)(b) of the Policy and Section 2(5) of the Registry Instruction on Requesting Translation, Interpretation and Verification Services (KSC-BD-14) (“Instruction”).

23. If an annex, any supporting material or other evidence contains text elements in a language other than English, the Specialist Prosecutor or participant, as applicable,

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<sup>10</sup> See SPO Submissions, paras 6-7, footnote 12. The labeling of the external sources may remain on the document or material concerned.

<sup>11</sup> See SPO Submissions, para. 4.



shall precisely define the scope of translation, specifying, as the case may be, the relevant section, page, paragraph or sentence to be translated, in LWF/FLOW, at the same time when submitting the relevant document for filing and in accordance with Sections 5(1)(b) and 5(3)(a) of the Policy.

24. Taking note of Section 5(2) of the Policy, the Single Judge retains the right to request the LSU, through CMU, to translate any text elements that require an official translation into English in the following situations:

- (1) Where the Specialist Prosecutor or participant, as applicable, has provided only a non-labelled translation of the relevant text elements (see paragraph 20); or
- (2) When no translation has been requested for a text element provided in a language other than English, but which the Single Judge deems relevant for the resolution of the request or matter.

25. The above ruling is without prejudice to the obligation of the Specialist Prosecutor from the outset to provide an English translation of each filing, including annex, supporting material or other evidence<sup>12</sup> or, if this is not the case, to define the scope of translation with precision.<sup>13</sup>

26. Mirroring paragraph 17 above, the Specialist Prosecutor and any participant, as applicable, are reminded not to submit any audio, video or online material without corresponding transcription. Where these instructions are not abided by, the Single Judge retains the right to either:

- (1) Disregard the relevant reference in the filing, including annex, or supporting material or evidence; or
- (2) Request that the Specialist Prosecutor or participant, as applicable, file a corrigendum to the filing, including annex, or supporting

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<sup>12</sup> See above paragraphs 13 and 15.

<sup>13</sup> See above paragraph 23.

material or evidence, including a transcription of the relevant reference and a translation thereof into English.

### 3. Dispute Settlement on Translation Matters

27. Any disagreement or controversy regarding the accuracy of translations shall be resolved by LSU.

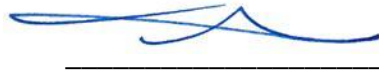
#### D. CLASSIFICATION

28. The present decision is filed as strictly confidential and *ex parte* pursuant to Rule 82(1) of the Rules in order to protect the confidentiality of the ongoing investigation. The present filing shall be reclassified as soon as this condition has ceased to exist, pursuant to Rule 82(5) of the Rules.

#### IV. DISPOSITION

29. For the above-mentioned reasons, the Single Judge hereby:

- a) Determines that the working language for proceedings under KSC-BC-2018-01 is English;
- b) Orders the Specialist Prosecutor to submit any filing, annex or supporting material or other evidence submitted together with a filing in full compliance with the detailed instructions set out above; and
- c) Orders CMU to inform any participant, as applicable, of the directions on languages, should the filing, including annexes, or other material submitted, not be in conformity with the directions set forth in this decision.



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**Judge Nicolas Guillou**

**Single Judge**

Dated this Thursday, 5 December 2019

At The Hague, the Netherlands.